

The State of New Hampshire

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Copy in opinion

ATTORNEY GENERAL
WARREN B. RUDMAN
DEPUTY ATTORNEY GENERAL
DAVID H. SOUTER
ASSISTANT ATTORNEYS GENERAL

IRMA A. MATTHEWS
THOMAS B. WINGATE
JOSEPH A. DICLERICO, JR.
ROBERT V. JOHNSON, II
DONALD W. STEVER, JR.
DAVID W. HESS
JOHN C. BOECKELER
THOMAS D. RATH



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MICHAEL P. BENTLEY
ROGER G. BURLINGAME
CHARLES G. CLEVELAND
EDWARD A. HAFFER
JOHN L. AHLGREN
GREGORY H. SMITH
RICHARD V. WIEBUSCH

Attorney General

Concord

May 27, 1974

Honorable Costas S. Tentas
Chairman
Liquor Commission
Storrs Street
Concord, New Hampshire 03301

Dear Mr. Tentas:

This will respond to your request of May 21, 1974 for our opinion whether the "Liquor Commission may open a second store in the City of Dover".

The background of this situation is, as I understand it, that the Commission has already decided to relocate the Dover Store from its present location to a new location under construction, and that the Commission already has the necessary appropriation of funds to effect that relocation. The real question then is whether the Commission may continue to operate the facilities at the old location until such time as a decision can be made as to the need for two stores in the City of Dover.

Your attention is invited to an opinion of this office dated June 6, 1966, addressed to Mr. Arnold T. Clement, Chairman, State Liquor Commission, which we believe addresses itself to basically the same questions you have posed in your most recent request. A copy of that opinion is enclosed for your convenience. The conclusion expressed in the last paragraph of the 1966 opinion is applicable in the present situation, notwithstanding that the present decision technically involves a decision whether to continue operations at an existing location, which operations would otherwise be terminated by re-

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location to a new store. Since the Liquor Commission's funds as appropriated in the Budget Act are categorized as to purpose only in general terms which are applicable to all stores without any distinctions as to location, the question reduces to whether there are sufficient funds available to maintain operations at the old location in addition to carrying out the relocation and modernization at the new location.

Such decisions are properly within the discretion of the Liquor Commission under RSA 177:1 and 2.

Very truly yours,

Warren B. Rudman
Attorney General

Charles G. Cleaveland
Attorney

CGC/tlr

Enclosure

June 6, 1966

Mr. Arnold T. Clement, Chairman
State Liquor Commission
109 No. Main Street
Concord, New Hampshire

Dear Mr. Clement:

This will reply to your memorandum dated June 1, 1966, in which you request our opinion with reference to the authority of the Liquor Commission to open a new Store in Gorham.

In your memorandum you state as follows:

"(1) Chapter 177:2 - All sales agents must be residents of the town or city in which the Liquor Store is located, or if none are available, they may be appointed from within the county. Under this section, would it be proper to use personnel presently assigned to the Berlin Store to operate as sales agents in the Gorham Store if one were to be established."

This is to advise you that it would not be proper to use personnel presently assigned to the Berlin Store to operate as sales agents in the proposed Gorham Store unless and until an attempt was made to hire residents of the Town of Gorham in the first instance. Only if there were no qualified residents who could fulfill the position of sales agent could you then transfer sales agents from the Berlin Store.

You state further in your memorandum:

"(2) The opening of a new Store would require the transfer of funds under the equipment budget. Would you inform me as to whether or not, under The Budget Act of 1965, authority is provided to transfer in this manner as well as to purchase equipment not specifically authorized by the Legislature."

This is to advise you that there is no authority in The Budget Act of 1965 to transfer funds from the equipment appropriation to any other account. There is authority, however, in Revised Statutes Annotated, Chapter 9, Section 16 and 17 for the transfer of funds from one appropriation account to another

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by the Comptroller upon the approval of the Governor and Council. It would be possible, therefore, to transfer funds in this manner provided, of course, that there were specified surplus funds in the appropriation account from which the transfer was to be made.

The final question that you ask is whether or not there is any legislative intent expressed in The Budget Acts in the Laws of 1965 with reference to the opening of any new State Liquor Stores during the present biennium.

In this connection, you state in your memorandum that in the last session of the legislature, the State Liquor Commission requested funds to staff and operate a leased State Liquor Store in Pelham, in addition to a new State-owned Liquor Store in Nashua and that no request or testimony was given relative to the opening of any other new store in any other area. It is our understanding from your memorandum that the legislature only appropriated sufficient funds within your budget for the purpose of these two stores in Nashua and Pelham.

Under the provisions of RSA Chapter 177, full discretion is vested in the Liquor Commission insofar as establishing and operating new State Liquor Stores is concerned. However, as a practical matter, the legislature controls the opening of new State Liquor Stores by means of the appropriations in the biennial budgets act. If the legislature does not appropriate the necessary funds, new stores cannot be opened.

The only direct expression of legislative intent set forth in the Laws of 1965 is that mentioned on pages 365 and 366, wherein the legislature specifically designates that the two stores in downtown Nashua shall be continued in addition to the new store being constructed in Nashua. There is no other direct expression of legislative intent on this subject.

The question of whether or not the Commission should open a new State Liquor Store in Gorham is to be decided by the Commission in the exercise of its discretion under the law, such decision to be based among other things, upon the availability of funds for equipment and personal services and all of the other expenditures necessary for the opening of a new State Liquor Store.

Very truly yours,

Alexander J. Kalinski
Assistant Attorney General

AJK:lj